

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: DECEMBER 20, 2007**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: VAR-25491 - APPLICANT: KEVIN HANER - OWNER: HANER FAMILY TRUST**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This application is a request for a Variance to allow the construction of a 14-foot tall patio cover where Title 19.08.040 allows a maximum patio height of 12 feet. The patio cover is located on 0.44 acres at 5201 Patricia Avenue. Although the structure has been partially completed, it has not received a final inspection, as the building permit review is pending the approval of this request.

If the applicant were to reduce the height of the patio cover by two feet it would be in compliance with the code. As such, staff recommends denial of this request, as it is from a self-imposed hardship.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
4/11/05	Code Enforcement Case #28464: complaint regarding installation of spot lights on top of patio. Case resolved 7/09/05
9/26/07	Code Enforcement Case #58313: building a second story structure (cabana-like) without permits in the rear of the house; residents also running a construction business out of this address. Case pending review of this Variance request.
<b><i>Related Building Permits/Business Licenses</i></b>	
10/12/01	Plan Check #M-0300-01: Permit issued for a 2,956 square-foot, detached accessory structure (1,831 square-foot garage and 1,125 patio cover). Final inspection completed 7/07/03
4/29/05	Building Permit #41685 issued for: Swimming Pool excavation only. Final inspection completed 4/29/05
5/23/05	Building Permit #43423 issued for: Swimming Pool. Final inspection completed 7/01/05.
10/02/07	Building Permit #99044 issued for: over-the-counter building permit to install lights, plugs, ceiling fan and sub-panel 100 amp for shade structure. Final inspection pending.
10/05/07	Building Permit #99428: balcony with sun deck and spiral staircase. Owner pulled electrical permit (see permit #99044). Final inspection pending.
11/05/07	Building Permit #101416 issued for over-the-counter building permit to remove and replace air conditioner. Final inspection pending.

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<b><i>Pre-Application Meeting</i></b>	
10/19/07	A pre-application meeting was held with staff regarding the actions required to obtain final approval of a Building Permit for a patio cover with a second-story landing. Staff discussed the history of the detached structure and that a structure 12 feet tall or lower could qualify as an expansion of a non-conforming use or that an approved Variance for the 14-foot tall patio cover would be required for the Building Permit to receive final approval.
<b><i>Neighborhood Meeting</i></b>	
A neighborhood meeting is not required, nor was one held.	

<b><i>Field Check</i></b>	
11/15/07	<p>A field-check was performed by staff with the following observations:</p> <ul style="list-style-type: none"> <li>• The patio cover is under construction, but not completed.</li> <li>• The patio cover is not visible from Patricia Avenue; it is partially visible from the rear alleyway.</li> <li>• Existing six-foot high screen wall located along the rear of the property.</li> </ul>

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Net Acres	0.44 acres

<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
North	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
South	Single Family Residence/ Undeveloped lot	DR (Desert Rural Density Residential)	R-E (Residence Estates)
East	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
West	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)

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<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Area Plan</b>		X	
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Purpose and Overlay Districts</b>			
A-O (Airport Overlay) District – 105 feet	X		Y
<b>Trails</b>		X	N
<b>Rural Preservation Overlay District</b>	X		Y
<b>Development Impact Notification Assessment</b>		X	NA
<b>Project of Regional Significance</b>		X	NA

## DEVELOPMENT STANDARDS

*Pursuant to Title 19.08.040(B).4.a, the following Residential Development Standards apply:*

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Setbacks			
Patio Cover			
• Rear	15 feet	30 feet	Y
• Side	15 feet	23 feet	Y
Max. Height (Patio Cover)	12 feet	14 feet*	N

*\*Height measured from finished banister; finished-floor is approximately 11 feet.*

## ANALYSIS

- Land Use and Zoning**

The project site is designated with the underlying zone as R-E (Residence Estates). The purpose of the R-E (Residence Estates) District is to provide for low density residential units on large lots and convey a rural environment. The parcel is designated as DR (Desert Rural Density Residential) in the General Plan and the R-E zoning district is consistent with this land use.

- Site Plan**

The provided site plan shows a patio cover centrally located on the property providing a shade canopy to the south end of the swimming pool. The location of the patio complies with the required setbacks as listed specifically for the R-E (Residence Estates) Zoning District. Although the patio cover is not visible from Patricia Avenue, it may be possible to see the occupants above the roofline on the platform from the alleyway located at the rear of the property.

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- **Elevations**

The cross sections indicate the existing patio cover rises to a height of 14 feet while Title 19.08.040 limits the height to 12 feet. A spiral staircase is located at the corner of the patio in order to provide access to the top. The applicant has stated that the staircase was included to allow the occupants to use the patio cover as a viewing platform. As the height does not conform to the zoning code requirements, staff recommendation is for denial of the Variance.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by creating a 14-foot high patio structure that exceeds the maximum allowable height. An alternative proposal that is less than 12 feet high would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

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**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 3

**ASSEMBLY DISTRICT** 1

**SENATE DISTRICT** 6

**NOTICES MAILED** 217

**APPROVALS** 2

**PROTESTS** 13